

\$~25

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. (COMM) 328/2018

MADHUCON PROJECTS LTD.

..... Petitioner

Through: Mr. Siddhartha Shankar Ray with
Mr. Suryadeep Singh, Advs

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA..... Respondent

Through: Mr. Rajiv Kapoor with Mr. Srikant
Sharma and Mr. Rashid Azam, Advs

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **31.07.2018**

I.A. No. 10060/2018

1. Issue notice.
2. Mr. Kapoor, accepts notice on behalf of the respondent.
3. Learned counsel says that he does not wish to file a formal reply to the application.
4. This is an application seeking condonation of delay in filing the petition.
5. Learned counsel for the petitioner says that this application has been filed by way of abundant precaution in view of the judgment of a Single Judge of this Court dated 29.05.2018, passed in *OMP (Comm) No. 199/2018*, titled: *Machine Tool [India] Limited V. Splendor Buildwell Pvt Ltd & Anr.*

6. Broadly, in this case, the Single Judge of this Court has opined that prior service on the opposite party before instituting a petition under Section 34(5) of the Arbitration and Conciliation Act, 1996 (in short “1996 Act”) was mandatory.

7. Counsel for the petitioner says that since prior service had not been effected before filing of the instant petition, steps were taken in that behalf and service was effected on the respondent i.e., the opposite party, on 26.07.2018.

8. It is submitted that even otherwise, the petition was filed within the period prescribed under Section 34(3) read with proviso to the said section.

9. Furthermore, counsel for the petitioner says that the view taken by the Single Judge of this Court in *Machine Tool [India] Limited* has been overruled by the Supreme Court in a judgment dated 30.07.2018, passed in Civil Appeal No. 7314/2018, titled: *The State of Bihar vs. Bihar Rajya Bhumi Vikas Bank Samiti Bihar Jharkhand*.

10. Thus, having regard to the overall circumstances and given the fact that the petition was filed within the prescribed period of 3 months, *albeit*, on the first day of opening of the registry of this Hon'ble Court after summer vacations, I am of the view that the delay can be condoned.

11. It is ordered accordingly.

12. The delay is condoned.

13. The application is accordingly disposed of.

I.A. No. 10059/2018 (Exemption)

14. Allowed, subject to just exceptions.

O.M.P. (COMM) 328/2018

15. After some arguments, learned counsel for the petitioner, seeks to withdraw the petition.
16. Accordingly, the petition is dismissed as withdrawn.

RAJIV SHAKDHER, J

JULY 31, 2018

c